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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,971	11/13/2006	Norbert Rodler	560/6	2725
27538	7590	11/26/2007	EXAMINER	
KAPLAN GILMAN GIBSON & DERNIER L.L.P.			MUI, CHRISTINE T	
900 ROUTE 9 NORTH			ART UNIT	PAPER NUMBER
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11/26/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/590,971	RODLER ET AL.
Examiner	Art Unit	
Christine T. Mui	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 November 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 10-19 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 August 2006 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :25 August 2006; 13 November 2006.

## DETAILED ACTION

### ***Election/Restrictions***

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12 November 2007.
2. Applicant's election without traverse of claims 1-9 in the reply filed on 12 November 2007 is acknowledged.

### ***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Figure 4a as indicated on page 5, [0021] in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement

Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "3" has been used to designate both switch-over circuit and switch-over branch. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

6. The disclosure is objected to because of the following informalities: On page 5 of the specification [0021], in the instance where it reads "Fig. 4a" probably should read "Fig. 4". There is only Figure 4 in the Drawings filed on 25 August 2006, not Figure 4a. Appropriate correction is required.

***Claim Objections***

7. Claim 17 is objected to because of the following informalities: The instance where it reads "claim 1, further comprising" probably should read "claim 10, further comprising". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 10-14 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,947,339 to Czekajewski et al (submitted on the Information Disclosure Statement on 25 August 2006; herein referred "Czekajewski").

10. Regarding claim 10, the reference Czekajewski discloses an apparatus for measuring the respiration, oxidation and similar interactions between a sample and a selected component of a fluid medium. Czekajewski discloses in the apparatus, a respirometer (closed reaction circuit) where there is an oxygen sensor/analyizer, a manifold that includes valves, a pump, a flow meter and a flow regulator a dehumidifier and a pressure sensor. The air in the system is replaced by providing a fresh air pump (gas flow containing oxygen; pump). The calculation of the rate of production or consumption of oxygen by a tissue or other sample in the sample chamber is controlled by a microprocessor (evaluation unit) which receives signals from the oxygen sensor

and controls the circulation of the gases (see abstract, column 3, lines 46-54, column 4, lines 25-26).

11. Regarding claim 11, the reference Czekajewski discloses a respirometer (closed measurement circuit) that comprises of a pump that pumps the air into the system with a regulator in fluid communication with the system valve or intake manifold that may be replaced by a fresh air pump. The first manifold includes the pump and valves for selectively opening and closing for the addition of gases into the apparatus (see column 3, lines 46-54, column 4, lines 25-26).

12. Regarding claim 12, the reference Czekajewski discloses a first manifold in the apparatus which includes valves that are regulated by a microprocessor that controls the circulation of gases in the system. There are specific valves in the manifold that are provided for the connection to calibration gases, air and the exhaust (see abstract, column 3, lines 46-54, column 4, lines 23-26).

13. Regarding claim 13, the Czekajewski discloses a microprocessor that receives signal from the oxygen sensor and controls the circulation of gases. The respirometer is controlled by a processor comprising of a microcomputer and a control program that reads the sensor signal and pressure indicator signal and communicates signals to the interface using the values read. The oxygen analyzer measures the concentration or fraction of oxygen in the various fluid media passing through it and produces a signal voltage that reflects the oxygen fraction (see abstract, column 4, lines 56-61, column 9, lines 11-14, 24-25).

14. Regarding claim 14, the reference Czekajewski discloses the respirometer apparatus that includes a dehumidifier comprising of a sealed container which is filled with a desiccant to dry the air before the gas sample is subjected to the oxygen sensor (see column 3, line 52, column 4, 45-49).

15. Regarding claim 18, the reference Czekajewski discloses the respirometer includes a manifold that comprises of valves that regulate the amount of oxygen gas sample into the chamber and intake of calibration and sample gases. It is interpreted by the examiner that the manifold is a multiway valve system. A flow meter or flow regulator is used to regulate the circulation of sample within the system. A rotameter with a built in valve may be used as the flow meter or flow regulator (see column 3, lines 46-52, column 4, lines 23-44).

16. Regarding claim 19, the reference Czekajewski discloses a respirometer apparatus that includes different components connected together by tubing or other conduits to transport fluid media particularly gases (see column 3, lines 46-54). It is interpreted by the examiner that the respirometer that includes different components are also housed or enclosed within the larger unit rather than just as individual pieces. Czekajewski discloses a processor that communicates with the valves, sensor and pressure indicator with an interface with channels of an A/D converter, which is also interpreted to be housed or enclosed (see column 9, lines 24-29).

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

20. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czekajewski as applied to claim10 above, and further in view of Rieblinger (submitted on the Information Disclosure Statement on 25 August 2006; herein referred Rieblinger.

21. A certified translation of Rieblinger has been submitted and is used for the basis of the rejection of the present claims, October 2007.

22. Regarding claim 15, the reference Czekajewski discloses the claimed invention except for a transparent measuring cell. Rieblinger discloses polymer based scavengers where they were subjected to a UV flash that indicates the presence of oxygen in food packing or samples (see page 4 of translation). It is interpreted by the examiner that if the scavenger is subjected to at least one UV flash it is capable of being exposed to multiple wavelengths where the scavenger is transparent to the light it is exposed to indicating the presence of oxygen in the sample. It would have been obvious to one having ordinary skill in the art at the time the invention was made to expose the cell to multiple wavelengths in order to observe the reactivity or sensitivity of the sensor to oxygen when light it is exposed to it.

23. Regarding claim 16, the reference Czekajewski discloses the claimed invention except for where a UV-radiation source irradiates the material in the measurement cell. Rieblinger discloses an oxygen sensor to indicate the amount of oxygen in packaging, in particular food items. Rieblinger discloses polymer based scavengers that are initiated by a UV flash to indicate how much oxygen is present in packaging (UV radiation source). The UV light of high energy that is captured by a photoinitiator in the polymer (see page 4 of translation). It is interpreted by the examiner that if there is a UV flash there needs to be a UV source to produce the flash. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a UV radiation source to indicate the amount of oxygen present in a sample or packaging so that one can quickly determine the concentration or presence of oxygen of a sensor with a short exposure time and high energy of UV radiation.

24. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Czekajewski as applied to claim 10 above, and further in view of USP 5,358,876 to Inoue et al (herein referred "Inoue").

25. Regarding claim 17, the reference Czekajewski discloses the claimed invention except for measuring the color change of the material as it relates to the presence of oxygen. Inoue discloses an oxygen indicator that includes at least one dyestuff that may be used under anhydrous conditions or under the presence of light. Inoue discloses the dyestuff of the indicator that makes reversible color changes that occurs between the conditions where oxygen is absent or present (see abstract, column 2, line 6-7 61-66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an oxygen indicator that indicates the presence or absence of oxygen by changing the color of the sensing material to quickly and easily identify the presence without much analysis other than sight.

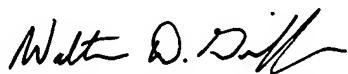
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Mui whose telephone number is (571) 270-3243. The examiner can normally be reached on Monday-Friday 8-5; Alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CTM

  
WALTER D. GRIFFIN  
SUPERVISORY PATENT EXAMINER